

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x

PRINCE JUAN ORTIZ, JR., an Infant
less than 14 years of age, by his
Mother and Natural Guardian,
MICHELLE S. WALKER, and MICHELLE S.
WALKER, Individually,

97 CV 250

Plaintiffs,

-against-

MEMORANDUM
AND
ORDER

JOHN PIERCE and GREYHOUND LINES, INC.,
JOHN DOE No. 1, a fictitious name, and
JOHN DOE No. 2, a fictitious name

Defendants.

-----x

MARK E. FEINBERG, ESQ.
186 Montague Street, 4th Floor
Brooklyn, New York 11201
for plaintiffs.

JEFFREY T. BARON, ESQ.
McElfish & Associates
350 5th Avenue
Suite 7220
New York, New York 10118
for defendants.

NICKERSON, District Judge:

This action was commenced on February 24, 1998 in
the Supreme Court for the State of New York, Kings

County. Defendants caused this case to be removed to the United States District Court, Eastern District of New York, on March 20, 1998 on the basis of diversity jurisdiction. On May 1, 1998 plaintiffs moved to have the action remanded to the Supreme Court for the State of New York, pointing out that both plaintiffs and defendant John Pierce reside in Kings County, New York, defeating diversity jurisdiction.

Plaintiffs' motion is granted. This court remands this action to the Supreme Court of the State of New York, County of Kings.

Defendants' attorney's decision to remove this action to federal court despite the lack of diversity jurisdiction is insupportable under the law. Rule 11(b) of the Federal Rules of Civil Procedure provides that by filing a motion or other paper with the court, an attorney

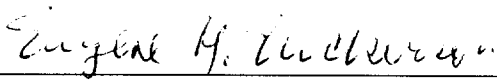
is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances. . . the claims, defenses, and other legal contentions therein are warranted by existing law.

Under Rule 11(c)(1)(B) this Court may direct an attorney to show cause why he should not be sanctioned for a violation of Rule 11(b). The Court is also empowered by 28 U.S.C. § 1447 to require "payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal."

Mr. Baron, attorney for defendants, is ordered to show cause why he should not be sanctioned within thirty days of the date of this memorandum order. Plaintiffs' reply papers, which should indicate actual expenses and attorneys fees incurred because of the removal, must be filed within seven days of receipt of defendants' papers.

So ordered.

Dated: Brooklyn, New York
May 8, 1998


Eugene H. Nickerson, U.S.D.J.